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Ralph A. Dowell of DOWELL & DOWELL P.C. 2111 Eisenhower Ave Suite 406 Alexandria, VA 22314			GRAHAM, MARK S	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/772,316
Filing Date: February 06, 2004
Appellant(s): SARTOR ET AL.

MAILED
JUL 26 2007
GROUP 3700

Ralph A. Dowell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/23/07 appealing from the Office action
mailed 6/9/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,333,857

Lallemand

8-1994

W) 03/097181 A1

McGrath et al.

11-2003

4,059,269	Tiitola	11-1977
6,273,835	Battis et al.	8-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6, 10, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Lallemand. Note Lallemand's foam core and mesh fiber layers 1, 2, and 3 which are then impregnated and covered with a thermoplastic resin. The outermost layer of material may be considered the thermoplastic sheet material. Regarding claim 30 the outermost portion of the thermoplastic material which covers the fiber layer 3 may be considered the sheet of thermoplastic material devoid of fibers.

Claims 1, 6-9, and 13-16 are rejected under 35 U.S.C. 102(e) as being anticipated by McGrath. Note McGrath's Fig. 14 embodiment and the discussion of the various materials that may be used therein discussed on pages 15-37, particularly pages 28-30. McGrath discloses multiple layers which may be woven and may contain the fiber angles claimed. Thermoplastic material may be used as the resin and the outermost layer may be considered the thermoplastic sheet material.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9, 13, 14, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lallemand. Lallemand discloses the claimed device with the exception of the particularly claimed foam and thermoplastic. However, the examiner took official notice that the foams and thermoplastics claimed by applicant are commonly known and such is now admitted prior art. It would have been obvious to one of ordinary skill in the art to have chosen which ever of these was desired to obtain a particular strength, weight, or flexibility characteristic in the blade. Regarding claim 32, the outermost portion of the thermoplastic material which covers the fiber layer 3 may be considered the sheet of thermoplastic material devoid of fibers.

Claims 30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lallemand in view of Tiitola '269. Lallemand discloses the claimed device with the arguable exception of the fiberless sheet materials. However, as disclosed by Tiitola '269 it is known in the art to use wood, plastic, or fiber sheets as the outermost sheet material on hockey blades. It would have been obvious to one of ordinary skill in the art to have used such on McGrath's blade as well for the reasons espoused by Tiitola '269.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGrath in view of Battis. Note Col. 4, lines 60-65 of Battis which teaches that the outer layer may include indicia for its inherent purpose. It would have been obvious to one of ordinary skill in the art to have provided such with McGrath's blade as well for the same reason.

(10) Response to Argument

Appellant's first, and main argument which begins on page 9 of the brief is that the prior art does not disclose the claimed "sheet of thermoplastic material covering at least partially said second layer of fibers" as claimed in independent claims 1 and 31. However, appellant freely states in the brief that Lallemand discloses a fiber layer 3, which is impregnated with thermoplastic resin and then cured which covers the second fiber layer 2. Appellant is of the opinion that because this thermoplastic layer 3 is of the same constitution as layers 1 and 2 it may not be considered a thermoplastic sheet as claimed. No support for this argument is given. To support such an argument the appellant would have to show that the definition of "sheet" is somehow limited to a layer of material which must be different than a layer of material which it adjoins. Clearly, the term "sheet" contains no such definition and therefore the argument must fail.

All that the claim requires is that a thermoplastic sheet cover the second layer of fibers, (in Lallemand's case this would be layer 2 covered by layer or sheet 3), and that it increase the impact resistance of the blade, which is an inherent result of having layer or sheet 3 over layer 2.

Appellant's further arguments as to how his blade is constructed vs. how Lallemand's blade is constructed are similarly unpersuasive. The claims at issue are article claims. Therefore, how one constructs the outer sheet of the blade is not at issue. There are no product-by-process limitations in the claims, but even had there been, the result would have been the same because an article claim which is

anticipated by the prior art does not further distinguish over the prior art based on the method by which one constructs the article.

Appellant's next argument concerns the anticipation of claims 1, 6-9, and 13-16 based on McGrath. Appellant's first argument, (page 12 of brief into page 13) is that McGrath uses only epoxy and does not disclose the claimed thermoplastic material for his outer sheet. In response the examiner notes page 29, line 24 of McGrath where the use of thermoplastic is clearly disclosed as the first material listed as a suitable resin material for impregnating the fiber layers.

The balance of appellant's arguments over the anticipation rejection based on McGrath merely mirror the arguments over the Lallemand anticipation rejections as to the nature of a covering "sheet" of thermoplastic material and fail for the same reasons explained by the examiner above.

Appellant's final argument concerns the obviousness type rejection of claim 31 based on Lallemand. Appellant first argues, page 15 of brief, that it has not been admitted for the record that "a sheet of thermoplastic material" was commonly known. A careful reading of the office actions will show that the examiner has never asserted that such an admission was made. All that the examiner has take official notice of, and which has not been disputed, is that the foam and plastic materials being claimed are commonly known. As explained with regard to the anticipation rejections based on Lallemand, the use of a sheet of thermoplastic materials is disclosed in the reference. While Lallemand did not disclose the specific claimed materials used for this sheet, or the foam in the blade, such are commonly known, and the examiner provided a

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motivation to use such materials. It is noted that appellant has argued neither the motivation provided by the examiner regarding the selection of a particular material nor that these materials are commonly known thermoplastics and foams.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Mark S. Graham



Mark S. Graham
Primary Examiner

Conferees:

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